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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/986,367	11/08/2001	David H. McDaniel	509582000221	5657
7590 09/22/2004				
Alex Chartove Morrison & Foerster LLP 1650 Tysons Blvd., Ste 300 McLean, VA 22102		EXAMINER FARAH, AHMED M		
		ART UNIT 3739 PAPER NUMBER		

DATE MAILED: 09/22/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/986,367

Applicant(s)

MCDANIEL, DAVID H.

Examiner

Ahmed M Farah

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 February 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,8 and 10-16 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1 is/are allowed.
- 6) ☒ Claim(s) 8 and 10-16 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 6/20/2003.

- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 8 and 11 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Although the parent Claims 1 and 10 recite that the source of the treatment energy is a "narrowband multichromatic electromagnetic radiation," dependent claims 8 and 11 recite the source is selected from a group consisting of an ultrasound. An ultrasound source, which generates sound/mechanical waves, does not provide EM energy radiation as recited in the parent claims and therefore renders the claims indefinite. Correction is required.

Furthermore, claim 11 recites the use of a laser diode as the source for the treatment energy. This also renders claim 11 indefinite because laser diodes generate a monochromatic light,

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not a multichromatic light as recited in the parent claim 10.

Correction is required.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 10-16 are rejected under 35 U.S.C. 102(e) as being anticipated by Tankovich et al. U.S. Pat. No. 6,050,990.

Tankovich et al. disclose a device and methods of use for applying laser light to the skin of a patient, including methods for removing hair, for synchronizing hair growth, and for stimulating hair growth (see the abstract).

As to claims 10, 12, 15 and 16, their methods for stimulating hair growth comprise the steps of: selecting at least one photomodulating agent 14 having an average diameter enabling the agent to penetrate the hair duct (see Fig. 1 7), the agent selected from a group consisting a dye and other

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photomodulating agents (Col. 9, lines 38-44); applying the agent to a skin section containing hair (see Fig. 22); and exposing the skin and the agent to electromagnetic radiation.

As to the recitation "narrowband" in claims 10, 15, and 16, the applicant fails to clearly teach the bandwidth that is considered as a narrowband. Hence, since the boundaries and/or bandwidth of the treatment radiation is not clearly defined in the applicant's written description or in the claims, the examiner considers that the flash-lamp of Tankovich et al. meets the recited limitation. Furthermore, the applicant's written description teaches that the radiation source is selected from the group consisting of fluorescent lights, flash-lamps, filamentous lights, etc (page 10, line 15), to provide the treatment energy, i.e., a narrowband, multi-chromatic light.

As to claim 11, the radiation source is selected from the group consisting of an ultrasound radiation emitter, a laser (Col. 10, line 27), and a flash-lamp (Fig. 35 and Col. 8, lines 48-64).

As to claim 13, the photomodulating agent has an absorption characteristic including absorption maxima at a wavelength equal to the wavelength of radiation source. See Col. 9, lines 35-38. As to claim 14, their device would provide at least one of the claimed features.

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Allowable Subject Matter

Claim 1 is allowed. The prior art of record do not disclose, teach or suggest a method for stimulating hair growth, comprising the steps of: exposing a hair growth structure to a source of narrowband multichromatic electromagnetic radiation having a dominant emissive wavelength of from about 390 nm to about 1600 nm, without having applied a drug, cosmeceutical, and/or chromophore to the hair growth structure; photostimulating the hair growth structure by maintaining the exposure of the hair growth structure to the source of narrowband multichromatic electromagnetic radiation for a clinically effective duration and at a clinically effective light intensity to stimulate hair growth without causing skin ablation.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ahmed M Farah whose telephone number is (703) 305-5787. The examiner can normally be reached on Mon-Fri..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Linda C.M DVorak can be reached on (703) 308-0994. The fax phone number for the

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organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A. Farah,
Patent Examiner, AU 3739



09/17/2004